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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 15th March, 2023

No. 13/1/9944-HII(2)-2023/3657.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 25/2019 dated 11.01.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

ARTI D/O SHRI BALRAJ BATRA, AGED 37 YEARS, NOW R/O HOUSE NO. 51, 1ST FLOOR,
AMAN GREED, NEAR CITY HEART, KHARAR, DISTT. MOHALI, PUNJAB (Workman)

AND

THE REGISTRAR, PANJAB UNIVERSITY, SECTOR 14, CHANDIGARH. (Management)

AWARD

1. Arti, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the management advertised the posts of Clerks on daily wages on contractual basis on DC rates stipulating the eligibility criteria for the selection through its advertisement dated 03.12.2010. In pursuance of the said advertisement the workman applied for the post of Clerk. After fulfilling the eligibility criteria and going through selection process, the workman was engaged and joined services on 27.04.2012 as daily wage Clerk for 89 days by the management as per norms and procedure laid down for making such appointment. The services of the workman were extended from time to time. The workman continuously remained in regular service of more than 240 days in a calendar year from the date of joining with the management. The services of the workman were terminated by the management on 23.04.2013 without any show cause notice, notice pay, charge sheet, inquiry and without any retrenchment compensation with the assurance that the workman will be called back. At the time of retrenchment the workman was drawing wages of ₹ 7,980/- per month. During the tenure of employment, the work & conduct of the workman with the management remained satisfactory. After illegal termination of the workman from services, the management engaged and joined new hands. The juniors to the workman are still in service with the management. Since termination the workman is unemployed and has no source of livelihood. At the time of retrenchment the management has given assurance to the effect that the workman would be taken back into service and always assured the workman to wait for some more time. The workman waited sufficiently as per the assurance but the management instead to join the workman into services, joined new hands on contract basis in the year 2014 and 2015. At last the workman issued and served demand notice

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dated 17.12.2018 seeking re-instatement into service. In pursuance of the demand notice the Conciliation Officer, Chandigarh initiated conciliation proceedings but the same stand failed *vide* order dated 16.09.2019. Prayer is made that the workman may be reinstated into service with continuity and full back wages.

2. On notice the management contested the claim statement by filing written statement on 27.02.2020 wherein preliminary objections are raised on the grounds that the claim is time barred as it is filed after a period of about six years. The workman has not approached the Court with the clean hands and concealed the material facts that a similar issue / petition / claim by her senior workman Shallu Devi and others has already been dismissed on merits by the Hon'ble High Court of Punjab & Haryana *vide* order dated 01.05.2015 in Civil Writ Petition No.2065 of 2015. The present false claim before this Tribunal amounts to abuse of process of law. Further, the workman was appointed as Clerk in the Panjab University, Chandigarh (*hereinafter in short referred to as 'University'*) on daily wage basis against the circular issued *vide* No.6096-6245/Estt. dated 29.03.2012. The workman joined as such on 27.04.2012. Admittedly, the workman was appointed on purely daily wage basis at fixed DC rates as applicable from time to time for seasonal examination / other work relating to the University affairs. In the detailed terms and conditions it is specifically mentioned that the assignment shall automatically come to end on expiry of the contract period or on completion of the seasonal examination / other work whichever is earlier, without any obligation of notice. It was specifically provided that daily wage Clerks shall not be entitled to claim any continuity in service or re-employment or regularisation. In view of the terms and conditions, which were duly accepted by the workman, the workman was relieved in accordance with the terms and conditions of the advertisement and also of the appointment order. The workman was relieved from service on 28.02.2013 after the selection of regular 308 Clerks appointed in response to Advt.14/2008. The University follows the legally acceptable principle of 'first come last go' for relieving the contractual / daily wage employee. According to the University office practice the awaiting list for engaging persons to post lapses after expiry of six months. An open Advt. No. 2 of 2014 was issued for the appointment of daily wage Clerks. In pursuance to the same the workman applied *vide* Roll No.8320141385 but she did not qualify as she obtained 05.50 Marks only. The action of the University has been upheld by the Hon'ble High Court of Punjab & Haryana in Civil Writ Petition filed by the workmen i.e. Ms. Shallu Devi W/o Baldev; Ms. Bandana D/o Surmukh Singh and Ms. Deepika D/o Shri Duryodhan Kumar who were senior to the workman. Hence, this junior workman cannot be granted the relief as prayed for.

3. Further on merits, it is stated that the fact that the management advertised the posts on daily wage Clerks on DC rates on contractual basis, stipulating the eligibility criteria for the selection through advertisement dated 03.12.2010 is a matter of record. It is denied as wrong that the workmen were appointed in pursuance of advertisement dated 03.12.2010 but the workman was appointed in pursuance to advertisement circulated *vide* No.6096-6245/Estt. dated 29.03.2012. The workman was appointed for a period of 89 days and her services were extended from time to time for 89 days with one day break on completion of the term of appointment. It is wrong that the workman has put her continuous service of more than 240 days in a calendar year. The workman was relieved after the selection of regular 308 Clerks appointed in response to advertisement dated 14.08.2008. The University management has complied with the provisions of the ID Act. Moreover, in the advertisement circulated *vide* No.6096-6245/Estt. dated 29.03.2012 it is stipulated that no retrenchment compensation will be given to the workman. No action was required to be taken on demand notice as the claim is unjustified on various grounds including being time barred. Further, similar stand is taken as in the preliminary objections. Rest of the averments of claim statement are denied as wrong except para 9 which are denied for want of knowledge. Prayer is made that the claim may be dismissed being devoid of merits.

4. Replication not filed. From the pleadings of the parties following issues were framed *vide* order dated 13.03.2020 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

5. In evidence, the workman Arti examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A' along with documents Exhibit 'AW1/1' to Exhibit 'AW1/3'.

Exhibit 'AW1/1' is copy of demand notice dated 17.12.2018 issued by the workman to the Registrar, Panjab University, Sector 14, Chandigarh under Section 2-A of the ID Act.

Exhibit 'AW1/2' is the original postal receipt dated 17.12.2018 relating to issuance of demand notice under registered cover.

Exhibit 'AW1/3' is copy of failure report bearing Memo No.3884 dated 16.09.2019 of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh whereby on account of failure of the conciliation proceedings, the workman was advised to approach the appropriate forum for the adjudication of dispute. On 14.10.2021 learned representative for the workman closed the evidence.

6. On the other hand, the management did not lead any oral or documentary evidence. Learned representative for the management closed evidence on behalf of the management on 07.03.2022.

7. *Vide* order dated 08.08.2022 the workman was allowed to lead additional evidence. On 14.12.2022 learned representative for the workman tendered into additional evidence the copies of documents i.e. List / record of still working daily wager Clerk with the management, engaged in the year 2011 Exhibit 'AW1/4'; Proceedings of the Selection Committee for appointment to the posts of Clerks & Clerk-cum-Data Entry Operators in the Panjab University, Chandigarh in response to Advertisement No.14/2008 containing list of regular appointed and joined Clerks & Clerk-cum-Data Entry Operators in the year 2013 with the management Exhibit 'AW1/5'; record of relieving orders of daily wager Clerks bearing No.13143-49/Estt. dated 13.06.2013, No.4380-85/Estt. dated 07.03.2013, No.16951-962 dated 31.07.2013, dated 11.03.2013, No.3537-3619/Estt. dated 27.02.2013 Exhibit 'AW1/6'; List of Clerks, who joined in the Secrecy Branch on the date mentioned against their names Exhibit 'AW1/7' and Office Order bearing No.14A-164A/Estt. dated 04.01.2016 whereby 44 daily wager Clerks were relieved w.e.f. 04.01.2016 Exhibit 'AW1/8' and closed additional evidence on behalf of the workman.

8. Opportunity to lead evidence in rebuttal to additional evidence of workman was provided to the management. The management did not lead any evidence in rebuttal to additional evidence and on 10.01.2023 learned representative for the management closed the same.

9. I have heard arguments of learned representatives for the parties and perused the judicial file. My issue-wise findings are as below :—

Issue No. 1 :

10. Onus to prove this issue is on the workman.

11. Under this issue the workman examined herself as AW1 and *vide* her affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto. To support her oral versions learned representative for the workman referred documents Exhibit 'AW1/1' to Exhibit 'AW1/8'.

12. On the other hand, the management did not lead any oral or documentary evidence.

13. From the evidence on record, it comes out that the workman was appointed as Daily Wage Clerk with the management-Panjab University, Chandigarh on 27.04.2012 against the circular issued *vide* No. 6096-6245/Estt. dated 29.03.2012. Initially the workman was appointed for 89 days. Thereafter, the services of the workman were extended from time to time till 23.04.2013 when the workman was relieved from the duty.

14. Learned representative for the workman argued that when the workman was relieved from her duties the post was in existence, in such situation the relieving of workman amounts to termination. The workman has completed 240 days of service in the year preceding the date of his / her termination. At the

place of the workman new employees are recruited which amounts to unfair labour practice. Before the termination the workman has not been issued any show cause notice, charge sheet. Neither any domestic inquiry has been held nor the workman has been paid any notice pay or retrenchment compensation. Therefore, the workman is entitled to be reinstated into service with continuity of service, full back wages and all other consequential benefits. To support his arguments learned Representative for the workman referred the case law reported in *1998(1) RSJ 703 (P&H) titled as Bhikku Ram Versus The Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak; 2001(1) SCT 205 (P&H) titled as The Faridabad Central Co-Op. Bank Ltd., Faridabad Versus The Presiding Officer, Labour Court (II), Faridabad; 2001(4) RSJ 137 (P&H) titled as State of Punjab Versus Kuldip Kaur; 2001(3) SCT 799 (P&H) titled as Haryana State Co-Op. Land Development Bank Ltd. Versus Presiding Officer, Labour Court, Rohtak; 2003(7) SLR 644 (P&H) titled as The Haryana State Co-Op. Land Development Bank Ltd. Versus The Presiding Officer, Labour Court, Rohtak & Another; 2006(2) SCT 105 (P&H) titled as Director, Health & Family Welfare, Punjab, Chd. & Others Versus Baljinder Singh & Another; 2010(2) SLR 15 SC titled as Harjinder Singh Versus Punjab State Warehousing Corporation; 2010(3) SLR 663 SC titled as Anoop Sharma Versus Executive Engineer, Public Health, Division No.1, Panipat (Hry.); 2012(3) PLR 332 (P&H) titled as Damyanti Versus Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & Another; 2014(11) SCC 85 SC titled as Bhuvnesh Kumar Dwivedi Versus Hindalco Industries Limited and 2015(2) SCT 91(SC) titled as Jamer Singh Versus State of Haryana & Another.*

15. On the other hand, learned Representative for the management contended that the workman was relieved from service in the year 2013 after the selection of regular 308 Clerks appointed in response to Advt. 14/2008. The university follows the legally acceptable principle of 'first come & last go' for relieving the contractual / daily wage employee. According to the university office practice the waiting list for engaging the persons to post lapses after the expiry of six months. An open advertisement No. 2 of 2014 was issued for the appointment of Daily Wage Clerks. The appointment of the workman was governed by the terms & conditions of the advertisement and the appointment order. Besides, similar situated employee Ms. Shallu Devi & others, who were senior to the workman had filed CWP No.2065 of 2015 titled as Shalu Devi & Others Versus Panjab University & Another in the Hon'ble High Court which was dismissed and the action of the university was upheld by the Hon'ble High Court.

16. The workman was relieved from duty on 23.04.2013. The workman did not challenge her relieving. It is not denied by the workman that in year 2014 advertisement No.2/2014 was issued by the university advertising for filling up the posts of Clerk on contract basis. The workman did not challenge the same. In this regard workman / AW1 in her cross-examination stated that she did not oppose the advertisement for engaging of daily wage Clerk in the year 2014. In the written statement in para 5 of preliminary objections and para 7, on merits, the management has specifically pleaded that an open Advt. No. 2 of 2014 was issued for the appointment of daily wage Clerks. In pursuance to the same the workman applied *vide* Roll No.8320141385 but she did not qualify as she obtained 05.50 Marks only. Along with the written statement attested copy of the result gazette for Clerks (daily wage) exam held on 08.03.2014 of Panjab University, Chandigarh is placed on record *vide* Annexure 'D' incorporating the name of workman Aarti against serial No. 1385, Roll No. 8320141385, father's name Balraj Batra, category General (GN), Marks 5.50. The workman did not file any rejoinder to the written statement to deny the aforesaid fact. When to put to cross-examination AW1 Arti stated that she has not applied against the advertisement for engagement of daily wage Clerk in the year 2014 and has not appeared in the written test. If the aforesaid version of AW1 is taken as correct, then also it implies that the workman even did not opt to apply against the advertisement for engagement of daily wage Clerk in the year 2014 and also did not appear to qualify the written exam despite opportunity.

17. The workman raised the demand notice on 17.12.2018 i.e. after more than five years of her relieving. The law laid down by Hon'ble Supreme Court of India and Hon'ble High Court of Punjab & Haryana in the judgments referred supra by learned Representative for the workman, is well recognized by this Court but the ratio of the rulings is not applicable to the facts of the present case. The similar matter as in the present case has already been decided by the ***Hon'ble High Court of Punjab & Haryana in CWP No.2065 of 2015 titled as Shalu Devi & Others Versus Panjab University & Another vide judgment dated 01.05.2015.*** The relevant portion of judgment dated 01.05.2015 is reproduced as below:-

"I have gone through the above judgments and find that the same are not applicable in the facts of the case in the case in hand. The facts of the case in hand reveal that the petitioners were relieved in 2013 i.e. about two years ago and in the interregnum period in February 2014, there was another selection which has taken place in which the petitioners participated but remained unsuccessful. Further, for the last about two years the petitioners have been out of the service of the respondent-University. Qua the impugned advertisement also, two of the petitioners applied and one of them even gave the written test. Thus, the facts of the judgment cited above by the learned counsel for the petitioners are different from the facts of the case in hand.

In view of the above, finding no merit in the present writ petition, the same is ordered to be dismissed."

In view of the above referred judgment dated 01.05.2015 of the Hon'ble High Court, the workman is not entitled to the relief claimed.

18. Accordingly, this issue is decided against the workman and in favour of the management.

Relief :

19. In the view of foregoing finding on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 11th January, 2023.

(Sd.). . .,
(JAGDEEP KAUR VIRK)
Presiding Officer,
Industrial Tribunal &
Labour Court,
Union Territory Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 28th February, 2023

No. 13/1/9947-HII(2)-2023/2880.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 21/2021, dated 17.01.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

DALER SINGH AGED 37 YEARS, S/O LATE SHRI AMARJIT SINGH, R/O HOUSE NO. 2514, MARIWALA TOWN, MANIMAJRA, UNION TERRITORY CHANDIGARH (Workman)

AND

M/S SIDH BABA BALAK NATH SEWA MANDAL (REGISTERED), PLOT NO. 3-4, SECTOR 29-A, UNION TERRITORY, CHANDIGARH - 160029 THROUGH ITS PRESIDENT/GENERAL SECRETARY/MANAGER. (Management)

AWARD

1. Daler Singh, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that after verbal termination of the workman he raised demand notice under Section 2-A of the ID Act. Copy of demand notice dated 09.01.2020 was sent to the management through registered post with AD. The workman waited for the response of the management but the management did not respond to the said demand notice for 3 weeks and then submitted demand notice before Assistant Labour Commissioner-cum-Conciliation Officer (ALC), U.T. Chandigarh for initiating conciliation proceedings. The conciliation proceedings failed. The ALC issued Memo No.4293 dated 20.11.2020 for closure of conciliation proceedings.

2. It is further averred that the workman joined the services of the management with effect from 01.10.2004 and worked continuously without any break or interruption in the services till 10.03.2019 when his services were terminated / retrenched with verbal orders. The workman was working as a Care-taker. At the time of his retrenchment / termination he was drawing wages @ ₹ 9,900/- per month which was below the rate of minimum wages fixed by the Labour Department, Chandigarh Administration. The workman performed his duties up to entire satisfaction of the management and his superiors. The workman was never issued any show cause notice, warning, charge sheet or any other memo to question his work & conduct through out his continuous service period of more than 14 years and 5 months. Sometimes the official of the management used to commit the irregularities and to save their skin, the management used to put the blame on the workman to clear the image of the officials in the public and use to issue show cause notice against the workman. At the time of his appointment, the management did not issue appointment letter to the workman. The workman was not issued any designation letter or identity card during the entire service period of more than 14 years. When the workman joined the services, there were more than 17 workers who were working in M/s Sidh Baba Balak Nath Sewa Mandal (Regd.), Plot No.3-4, Sector 29-A, U.T. Chandigarh. The workers were not covered under the welfare schemes like ESIC and provident fund. The management is managing one Temple in the name of Baba Balak Nath Temple in Plot No.3 and one *Dharamshala* in adjoining plot No.4. The management had formed a Trust in the name & style of M/s Sidh Baba Balak Nath Sewa Mandal (Regd.), Plot No.3-4, Sector 29-A, U.T. Chandigarh. The Baba Balak Nath Temple is a place of workshop and lakhs of people visit the Temple for the purpose of worship. Every worshiper offer money, fruits, milk and food grain as per their belief. The *Dharamshala* is rented out for the purpose of holding marriages, religious and social functions and also rented out for the stay of outsiders, who come to Chandigarh for short durations. From both the sources i.e. offering in the Temple and renting out of *Dharamshala*, lakhs of rupees

are collected per month. The money collected is used for meeting the expenses of cleanliness, repair, renovation, water & electricity charges and payment of salaries / wages to its workers / staff. The funds are also spent on welfare schemes like running ambulances and some other schemes. The management is also running a dispensary and had employed a Doctor on part time basis and free medicines are distributed to the patients. At present there 15 employees / workers employed by the management who are working as Care-takers, Security Staff, Sweepers, Pujaries, Cooks and Helpers. There are / were various welfare schemes lodged by the management for the general public on behalf of the Trust but the workers employed by the management were paid below the rate of minimum wages fixed by the Labour Department, Chandigarh Administration. It was difficult for the workers to run their households with their wages and they were raising issues with the management for the increase of their wages as per the wages fixed by Labour Department of Chandigarh Administration. This demand was not acceptable to the management and it started targeting the workers by one way or the others. The workman was also raising his resentment against non-implementation of even minimum rate of wages. The workman was warned against raising his voice. On 10.03.2019 the workman was not allowed duty by Shri Kamlesh Chander Patpatia, Treasurer of the Trust and was verbally told that his services are more required by the management. The workman requested for duty verbally with folded hands but his requests and prayers were ignored by the management and his services were retrenched / terminated with verbal orders. The workman also approached the President and General Secretary of the Trust but nobody helped him. On 16.03.2019 the workman submitted an application but the same was never replied. The workman also approached various members of the General Body of the Trust and they assured that they will raise the issue in the General Body meeting and advised not to approach the Labour Department in this matter. Now the workman has lost the hope of help from the management and the other members of the General Body of Trust hence the workman raised demand notice. The termination / retrenchment of the workman is illegal, unjustified, against the principles of natural justice, highly arbitrary and patently mala fide on the following grounds :—

- (i) The workman performed his continuous services for 14 years and 5 months and 9 days. At the time of his verbal termination, the workman was neither served notice of termination / retrenchment nor paid notice pay and compensation for the retrenchment. As such the retrenchment is in violation to Section 25-F of the ID Act.
- (ii) At the time of retrenchment of the workman his juniors were retained in the service, whereas the services of the workman were retrenched in violation to Section 25-G of the ID Act.
- (iii) The termination / retrenchment of the workman is not termination simpliciter but the termination by way of punishment as the workman was demanding payment of wages as per law.

Thus, the workman is entitled for reinstatement along with continuity of services, full back wages and all other service benefits applicable from time to time. Prayer is made that the statement of claim may be accepted.

3. On notice, the management contested the claim statement by filing written statement on 27.09.2021 wherein preliminary objections are raised on the ground that the present claim statement is not maintainable in the eyes of law as the workman is habitual of the misconduct from time to time. The workman is dealing with the cash of the management and he utilized the same for his personal use. The explanation was taken from the workman. The reply dated 09.09.2016 of the workman clearly shows that he admitted the misconduct and requested the management not to take action and he shall not repeated the same in future. The workman usually comes too late to the office and his explanation has been sought. The workman admitted the facts on 30.06.2018 and 15.07.2018 and again requested that in future he will not repeat the matter. On 10.03.2019 a complaint has been received from Nikhil Sharma that amount of ₹ 2,000/- as a security has not been refunded to him in spite of number of requests. When the record was verified the amount was not refunded which amounts to misconduct and due to this reason the services of the workman were terminated on the ground of misconduct admitted by him from time to time.

4. Further on merits, it is stated that the facts that after verbal termination of the workman he raised demand notice and the consequential proceedings before the ALC failed needs no reply. Further the facts that the workman joined the services of the management w.e.f. 01.10.2004 and worked continuously till 10.03.2019 without any break or interruption and that his services were terminated / retrenched with verbal orders and further the fact that the workman was working as a Care-taker and was drawing wages @ ₹ 9900/- per month needs no reply. The workman was not performing duty to the satisfaction of the management. On his request, the workman was continued in service that he will reform his duty but all in vain. Hence, the services of the workman were terminated which is legal and justified. It is stated that the facts that at the time of appointment no appointment letter was issued to the workman and no designation letter or identity was issued to the workman by the management and further the fact that when workman joined there were more than 17 workers working with the management and the said worker were not covered under the welfare schemes like ESIC and provident fund are replied being matter of record. It is admitted that the management is managing one Temple and adjoining *Dharmashala* and it has formed a Trust in the name & style of M/s Sidh Baba Balak Nath Sewa Mandal (Regd.), Plot No.3-4, Sector 29-A, U.T. Chandigarh. It is further stated that the Mandir in the name & style of Baba Balak Nath is for the welfare of the public and the *Dharamshala* and dispensary is also there for the welfare of the public on the normal rates. Free medicines are distributed to the patients. Hence, the dispensary and *Dharamshala* is running on the basis of 'no profit no loss' but for the welfare of the public. In the claim statement the workman admitted that the welfare schemes are launched by the management for the public on behalf of the Trust but the Trust shall get any profit. It is further stated that sufficient salary has been paid to the employees along with other benefits. Hence, in case it is difficult for the employees to run their household then why he is working for the last 15 years with the Trust / management. Further similar stand is taken as taken in the preliminary objections. Rest of the averments of claim statement are denied as wrong except para No.13 which is being reply as matter of record and prayer is made that the claim statement may be dismissed.

5. The workman filed rejoinder to the written reply wherein the contents of the written reply except admitted facts of the claim statement are denied as wrong and averments of claim statement are reiterated.

6. From the pleadings of the parties following issues were framed *vide* order dated 06.01.2022 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

7. In evidence, the workman Daler Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'AW1' to 'AW3'.

Exhibit 'AW1' is copy of demand notice dated 09.01.2020 under Section 2-A of the ID Act issued by the workman to President / General Secretary / Manager, M/s Sidh Baba Balak Nath Sewa Mandal (Regd.), Plot No.3-4, Sector 29-A, U.T. Chandigarh.

Exhibit 'AW2' is failure report bearing Memo No.4293 dated 20.11.2020 addressed from the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh to workman Daler Singh.

Exhibit 'AW3' is notary attested copy of Adhaar Card of Daler Singh. It is pertinent to mention here that during the cross-examination of AW1 Daler Singh Learned Representative for the management has put the documents Exhibit 'M1' to 'M5' to the AW1.

Exhibit 'M1' is copy of show cause notice dated 01.09.2016.

Exhibit 'M2' is copy reply dated 08.09.2016 to the show cause notice dated 01.09.2016.

Exhibit 'M3' is decision of the management dated 26.09.2016 regarding show cause notice dated 01.09.2016.

Exhibit 'M4' is copy of reply dated 30.06.2018 to show cause notice dated 16.04.2018 and 19.06.2018.

Exhibit 'M5' is copy of reply dated 15.07.2018 to the show cause notice.

On 31.08.2022 Learned Representative for the workman closed the evidence on behalf of the workman.

8. On the other hand, the management examined MW1 Kamlesh Chander Patpatia - General Secretary, M/s Sidh Baba Balak Nath Sewa Mandal (Regd.), Sector 29-A, U.T. Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with copies of documents i.e. resolution dated 06.11.2022 of the association *vide* Exhibit 'M1'; show cause notice dated 01.09.2016 *vide* Exhibit 'M2'; reply dated 08.09.2016 to the show cause notice *vide* Exhibit 'M3'; decision of the management dated 26.09.2016 regarding above said show cause notice *vide* Exhibit 'M4'; reply dated 15.07.2018 to show cause notice submitted by workman *vide* Exhibit 'M5'; reply dated 20.01.2019 to show cause notice submitted by workman *vide* Exhibit 'M6'; complaint filed by Shri Nikhil Sharma dated 10.03.2019 against the workman *vide* Exhibit 'M7' and receipt issued on 10.03.2019 for amount of security paid by Shri Nikhil Sharma *vide* Exhibit 'M8' through Shri Kamlesh Chander, General Secretary. (Documents Exhibit 'M1' to 'M5' have been numbered twice. Therefore, in order to avoid any ambiguity the documents tendered by MW1 Kamlesh Chander Patpatia as Exhibit 'M1' to 'M5' are hereinafter referred as Exhibit 'MW1/1' to 'MW1/5' respectively. On 12.01.2023 Learned Representative for the management closed evidence on behalf of the management.

9. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue wise findings are below:-

Issue No. 1 :

10. Onus to prove this issue is on the workman. Under this issue workman Daler Singh examined himself as AW1 and *vide* his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto. AW1 supported his oral version with documents Exhibit 'AW1' to Exhibit 'AW3'.

11. On the other hand management examined MW1 Kamlesh Chander Patpatia, General Secretary of M/s Sidh Baba Balak Nath, Sector 29, Chandigarh *vide* his affidavit Exhibit 'MW1/A' deposed all the material contents of the written statement and supported his oral version with documents Exhibit 'MW1/1' to Exhibit 'MW1/5' and Exhibit 'M6' to Exhibit 'M8'.

12. From the oral as well as documentary evidence lead by the parties it has come on record that undisputedly workman joined with the management organisations as Care-taker in 01.10.2004 and the services of the workman were terminated on 10.03.2019 by the management by verbal orders. In this regard MW1 Kamlesh Chander Patpatia in his cross-examination admitted as correct that the workman joined with the organisation from 01.10.2004 as a Care-taker. MW1 admitted as correct that the services of the workman were terminated w.e.f. 10.03.2019 by verbal orders.

13. Learned Representative for the workman contended that the termination of the workman is illegal on the ground that the workman is neither charge-sheeted nor any domestic inquiry was conducted before his termination. To support his contention Learned Representative for the workman referred cross-examination of MW1 wherein he has stated that there is no copy of charge-sheet except the show cause notices dated 01.09.2016 / Exhibit 'MW1/2' and dated 26.09.2016 / Exhibit 'MW1/4'. MW1 in his cross-examination further stated that no charge sheet was ever issued to the workman and no domestic inquiry was conducted with regard to the allegations levelled in the show cause notices. On the other hand, Learned Representative for the management contended that there is no practice in the *Mandir* to issue any charge sheet. Besides, the workman was issued show cause notice dated 01.09.2016 / Exhibit 'MW1/2' to which the workman filed reply *vide* Exhibit 'MW1/3' and another show cause notice dated 26.09.2016 / Exhibit 'MW1/4' was issued to the workman to which the workman filed reply Exhibit 'MW1/5'.

14. In the show cause notice dated 01.09.2016 / Exhibit 'MW1/2' the management levelled five allegations against the workman and sought his explanation on the said allegations i.e. (i) On 13.08.2016 in the meeting of Executive Members a question was raised as to how the copy of register of *Dharamshala* reached with Ashok Sharma; (ii) as per receipt book No.4076 to 4100 amount of ₹ 14,800/- was collected but amount of ₹ 5,400/- has been deposited. In this manner, amount of ₹ 9,400/- is less deposited which is misused of the amount of *Dharamshala* / Mandir; (iii) as per receipt book No.4101 to 4125 amount of ₹ 29,200/- was collected but amount of ₹ 26,600/- has been deposited. In this manner, amount of ₹ 2,600/- is less deposited which is misused of the amount of *Dharamshala* / Mandir; (iv) apart from that you never come to duty on time. The morning arrival time is 6:00 but you come present sometimes at 7:00 and sometimes at 7:30. In this manner the

evening duty commence at 2:00 P.M. but you never came present before 2:30; (v) on 27.08.2016 you were informed not to leave after completion of duty at 2:00 because you were to appear before the Committee to give explanation for non-deposit of receipt book in time. But you disobeyed the directions of President and General Secretary and you left without informing at the office of *Dharamshala* in this manner you have disobeyed President, General Secretary and Executive Committee. The perusal of reply dated 08.09.2016 to show cause notice dated 01.09.2016 / Exhibit 'MW1/3' would reveal that the workman submitted reply to the aforesaid allegations No. (i) to (v) and at the end tendered written apology for his misconduct.

15. Exhibit 'MW1/4' is letter dated 26.09.2016 issued by the management to the workman wherein it is mentioned that the workman in his reply admitted that he has kept the amount with him and he had been doing so since many years which is considered as embezzlement by the committee. The workman has also admitted that he has disobeyed the directions of President / Secretary and Committee. Since the workman has realised his mistakes and has assured not to repeat the said mistakes in future, therefore, the members have decided that the workman may be directed to rejoin his duty. *Vide* letter Exhibit 'MW1/4' certain directions were issued to the workman for compliance.

16. Exhibit 'MW1/5' is letter dated 15.07.2018 addressed from the workman to President of the management whereby he has withdrawn his words mentioned in para 3 of reply to show cause notice dated 02.07.2018. Letter Exhibit 'MW1/5' bears endorsement of workman that in future, he will come in time and he apologised in context with matter of para 3. Exhibit 'M6' is letter dated 20.01.2018 addressed from the workman to the management wherein the workman has mentioned that generally he report for duty in time and he might have got late sometime due to family affairs of which he tendered his apology with the undertaking that in future he will remain careful.

17. From the contents of Exhibit 'MW1/2' to 'MW1/5' and Exhibit 'M6' referred above it is made out that the workman was habitual of committing irregularities and misconduct while discharging his official duties as Caretaker. The workman was repeatedly warned against the said irregularities and misconduct to which the workman had tendered written apology many times with the assurance to remain careful in future and not to repeat the same. The plea taken by the workman in his cross-examination that apology letter dated 15.07.2018 has been tempered with by the management does not stand proved. AW1 in his cross-examination denied the suggestion as wrong that he again tendered apology *vide* letter dated 15.07.2018, copy of which is Exhibit 'M5'. AW1 voluntarily stated that the two lines written at the end of the letter bearing serial No.1 & 2 are not in his handwriting and the same are added later on by the management. The aforesaid version of AW1 stand falsified from his further statement in cross-examination wherein AW1 admitted as correct that Exhibit 'M5' bears his signatures at point 'B'. The original of Exhibit 'M1' to Exhibit 'M5' were produced by the management during cross-examination of AW1 which were seen and returned. Perusal of letter Exhibit 'M5' would reveals that the content of letter has various cutting and overwriting but the content is not denied by the workman. As mentioned above, the workman has admitted his signatures at point 'B' of Exhibit 'M5'. Copy of reply dated 30.06.2018 to show cause notice reference No. SBBNM/2018/126 dated 16.04.2018 and reference No.SBBNM/2018/153 dated 19.06.2018 *vide* Annexure 'M4' and copy of letter dated 15.07.2018 *vide* Annexure 'M5' (in evidence Annexure 'M5' proved *vide* Exhibit 'M5') was placed on record by the management along with the written statement as mentioned in preliminary objection No.3. In rejoinder, in reply to preliminary objection No.3 the workman has pleaded that Annexure 'M4' and Annexure 'M5' are the creation of the management to save certain persons and to put the blame on the poor workman. If above said plea taken by the workman in the rejoinder is taken as correct, then it would imply that the workman has denied the entire documents Annexure 'M4' and Annexure 'M5'. But when put to cross-examination the workman / AW1 admitted as correct that Exhibit 'M5' bears his signatures at point 'B'. If the aforesaid version of AW1 in his cross-examination, is admitted as correct, then it would imply that the workman has admitted that he moved letter Exhibit 'M5' (Annexure 'M5') to the management under his signatures. If the endorsement serial No.1 & 2 of Exhibit 'M5' is ignored, then also as per the contents of the letter the workman has tendered apology for the irregularities committed by him. AW1 in his cross-examination stated that he has seen the original of Exhibit 'M1' to 'M5' produced by the management. Thus, there is no reason to disbelieve letter dated 15.07.2018 / Exhibit 'M5'.

18. Learned Representative for the management contended that the workman did not mend his behaviour and conduct despite repeated warnings issued to him and despite the written apologies tendered by the workman. On 10.03.2019 a complaint Exhibit 'M7' was received from Nikhil Sharma that security amount of ₹ 2000/- has not been refunded to him in spite of number of requests. When the record was verified, it was found that the amount was not refunded by the workman which amounts to misconduct and due to this reason the services of the workman were terminated on the ground of misconduct admitted by him from time to time. On the other hand, Learned Representative for the workman argued that sometimes the official of the management used to commit the irregularities and to save their skin, the management used to put the blame on the workman to clear the image of the officials in the public and used to issue show cause notice against the workman. To my opinion the plea taken by the workman that the official of the management used to commit irregularities and to save their skin the management used to put the blame on the workman does not stand proved because the workman did not mention any instance where officials of the management committed any irregularities. The plea taken by the workman in the cross-examination of MW1 that a loan of ₹ 10,75,000/- was sanctioned to Vinod Kumar Chadha and the same was not repaid has no concern with the allegations levelled against the workman in the various show cause notices issued to him. Even during the evidence in the present case the workman failed to explain the reason for non-refund of the security amount of ₹ 2,000/- by him to Nikhil Sharma.

19. From the discussion made above, it is made out that the workman did not dispute the allegations of misconduct against him and by filing reply to show cause notices sought an opportunity to correct himself but failed to mend his conduct, due to which the workman was discharged from service being habitual offender. To such circumstances, the judgment referred by Learned Representative for the management reported in **2019(4) SCT 816 (SC) titled as Union of India & Others Versus 794898T.Ex. Corporal Abhishek Pandey** is applicable to the facts of the present case to an extent. Para 7 of the said judgment is reproduced as below :—

"7. The Respondent was initially a potential habitual offender before he was considered as a habitual offender. He was entitled for a warning to be issued in 2008. Admittedly, there was a delay in issuance of the warning letter. Ultimately, the warning letter was issued on 18.04.2012. The Respondent did not mend himself for which reason a show cause notice was issued to him. Even in the explanation to the show cause notice, the Respondent did not dispute the allegations of misconduct made against him. He, in fact, admitted to having indulged in acts of indiscipline and sought for another opportunity to correct himself. The show cause notice issued to the Respondent is in accordance with the Habitual Offenders Policy. A second warning letter is not required when it is decided to pass a final order without giving another chance. There is no violation of the procedure prescribed by the Policy dated 16.12.1996."

Therefore, termination of the workman is legal.

20. Accordingly, this issue is decided against the workman and in favour of the management.

Relief :

21. In the view of foregoing finding on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 17th January, 2023.

(Sd.). . .,

(JAGDEEP KAUR VIRK)
Presiding Officer,
Industrial Tribunal &
Labour Court,
Union Territory Chandigarh.
UID No. PB0152.

Secretary Labour
Chandigarh administration.

CHANGE OF NAME

I, Ravi Kumar, S/o Dinesh Kumar, # 638, Sector 25-D, Chandigarh, have changed name of my minor son Aahil Shaikh to Aaditya Singh.

[277-1]

I, Ravi Kumar, S/o Dinesh Kumar, # 638, Sector 25-D, Chandigarh, have changed name of my minor daughter from Barkat Shaikh to Nisha Singh.

[278-1]

I, Reema Gautam, W/o Vijay Kumar, R/o # 111, Khuda Lahora, New Colony, Chandigarh, declares that I have changed my name from Reema Gautam to Reema Bharti.

[279-1]

I, Devinder Kumar, S/o Late Sh. R.D. Sharma, H. No. 138, Sector 19-A, Chandigarh, have changed my name from Devinder Kumar to Devinder Kumar Sharma.

[280-1]

I, Deepti Maini *Alias* Deepti, D/o Ravinder Kumar Arora, R/o H. No. 439, Sector 37-A, Chandigarh, have changed my name to Deepti Arora.

[281-1]

I, Deepti Arora, D/o Ravinder Kumar Arora, R/o H. No. 439, Sector 37-A, Chandigarh, have changed my minor son's name Daksh to Daksh Arora.

[282-1]

I, Nippu Gupta, S/o Shri Chander Bose, R/o House No. 120, Sector 41-D, Badheri, U.T., Chandigarh, declare that I have changed my name from Nippu Gupta to Jai Gupta.

[283-1]

I, Sunita, D/o Inder Ram, R/o # 376, Ramdarbar, Phase 2, Chandigarh, have changed my name to Seema.

[284-1]

I, Gunjan Devi, W/o Chittranjan Kumar, # 50-B, Sector 31-A, Chandigarh, have changed my name to Gunjan Kumari.

[285-1]

I, Lakhbir Singh, S/o Chanan Singh, H. No. 1603-B, Sector 35-B, Chandigarh, do hereby solemnly affirm and declare I have change my name Lakhbir Singh to Lakhbir Singh Dhillon.

[286-1]

I, Lakshman Singh, S/o Lakhan Singh, R/o # 353/1, Sector 32-A, Chandigarh, have changed my name to Laxman Singh Rana.

[287-1]

I, Ranjit Kumar, S/o Shri Lal Bahadur Mahto, R/o House No. 1268, Sector 56, Chandigarh, declare that I have changed my son's name from Anand Kumar Mahto to Anand Kumar.

[288-1]

I, Pappu, S/o Sahendra, R/o 2300, Sector 25-D, Chandigarh, have changed my minor son's name Saurav to Sourav.

[289-1]

I, Kanwaljeet Kaur, W/o Opinder Singh, R/o H. No. 2501/B, Pradip Vihar, AWHO Society, Sector 47-C, Chandigarh, have changed my name from Kanwaljeet Kaur to Kanwaljit Kaur.

[290-1]

I, Gunjan Gaba, S/o Ajit Singh, R/o H. No. 1081, Sector 20, Chandigarh, have changed my name from Gunjan Gaba to Gagan Gaba.

[291-1]

I, Hiraunda Devi, W/o Mewa Lal, House No. 369, Part 2, Mauli Jagran Chandigarh, have changed my name from Hiraunda Devi to Seema Devi.

[292-1]

I, Jasbir Kaur, W/o Rajinder Kumar, R/o # 333 Village Faidan Nizampur, Chandigarh-160047, have changed my name from Jasbeer Kaur to Jasbir Kaur.

[293-1]

I, Tara Prasad Khadka, S/o Dan Bahadur Khadka, # 3037, Sector 28-D, Chandigarh, have changed the name of my minor daughter from Tanishka to Tanishka Khadka.

[294-1]

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